

Cooper Tank and Welding Corp., and Cooper Truck Corp., and Waste Material Sorters, Trimmers, and Handlers, Local 958, Laborers International Union of North America, AFL-CIO, Petitioner.
Case 29-RC-9096

June 18, 1999

DECISION ON REVIEW AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND BRAME

On September 30, 1998, the Acting Regional Director for Region 29 directed an election in the above-captioned proceeding in which, among other things, he found that a contract between the Employer and the Intervenor¹ was not a bar to an election. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer and the Intervenor filed timely requests for review of the Acting Regional Director's Decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has carefully considered the Employer's and the Intervenor's requests for review. The requests for review are granted as they raise substantial issues solely with respect to the Acting Regional Director's finding that the instant petition, as it concerns Cooper Tank's Maspeth Avenue facility employees, is not barred by a collective-bargaining agreement between Cooper Tank and Intervenor. In all other respects, the requests for review are denied.²

Having carefully reviewed the entire record and the facts as set forth by the Acting Regional Director, we conclude, contrary to the Acting Regional Director, that the contract between Cooper Tank and Intervenor does have bar quality with respect to the Maspeth Avenue employees. In order to act as a bar, a collective-bargaining agreement must contain substantial terms and conditions of employment to which parties can look for guidance in resolving day-to-day problems. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). We do not agree with the Acting Regional Director's finding that the contract's failure to set forth specific wage rates is fatal to the contract's being a bar. First, we note that in all other respects the contract is complete. It includes provisions pertaining to, inter alia, union security, general conditions, picket lines, hours of work, Saturday and Sunday work, shop stewards and union visitation, senior-

ity, grievance and arbitration procedures, holidays, vacations, better working conditions, discrimination against union members, work condition standards, discharges, strikes and lockouts, leave of absence, and health and welfare. That a contract of this dimension does not include a specific wage provision as such is, in this context, insufficient to render it null for bar purposes. *Sturdee Health Products*, 248 NLRB 1100 (1980); *Spartan Aircraft Co.*, 98 NLRB 73 (1952).

Moreover, the contract does contain references to wages and, indeed, is capable of being interpreted as containing a wage provision. Section 27 of the collective-bargaining agreement states that employees are to be paid at least 25 cents above the established Federal or state minimum wage. Section 9 further states that employees "shall be paid the minimum wages as set forth in Schedule A." Schedule A sets forth yearly increases, thereby providing a mechanism by which wage increases can be determined. Thus, it is arguable that the contract specifies that wages are, at a minimum, 25 cents above minimum wage. In any event, considering the otherwise extensiveness of the contract, we are unwilling to find that the absence of a definitive wage provision removes the contract as a bar.

We also disagree with the Acting Regional Director's finding that the contract cannot operate as a bar to Maspeth Avenue employees because it does not contain an execution date. It is well settled that the absence of an execution date in a contract does not remove the contract as a bar if it is established that the contract was, in fact, signed before a petition has been filed. *Western Roto Engravers, Inc.*, 168 NLRB 986 (1967). Cf. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970). It is undisputed that the collective-bargaining agreement here was signed by all parties and contains an effective date. The Acting Regional Director found, however, that he could not determine with certainty that the contract was signed prior to the filing of the petition. The Employer's witness testified, however, that the contract was so signed. In addition, we note that there are contemporaneous letters, signed and dated prior to the filing of the petition, which refer to the contract in effect. The letters, from the Intervenor to the Employer, are signed by both parties. They are dated in November 1997, almost a year prior to the filing of the petition. They modify language "of the collective bargaining agreement entered into between" the parties. Each letter advises the Employer to "attach a copy of the letter at the end of your collective bargaining agreement." These letters, and the other evidence cited above, lead us to conclude that the contract was signed prior to the filing of the petition.³ Therefore, the absence

¹ Local 445, League of International Federated Employees.

² In denying review with respect to Cooper Tank's Moore Street facility's employees, we note the Acting Regional Director's finding that the terms and conditions of the bargaining agreement alleged as a bar have been applied only to the Maspeth Avenue location, and not to the Moore Street location. Accordingly, our decision herein does not affect the Acting Regional Director's finding that an election at the Moore Street facility is not barred by the agreement between Cooper Tank and the Intervenor.

³ *Roosevelt Memorial Park*, supra, relied upon by the Acting Regional Director is distinguishable. There, evidence concerning the date of execution was vague and contradictory. That is not the case here.

of an execution date in the contract does not negate its bar quality.

In light of the foregoing, we find that the contract between Cooper Tank and Intervenor is a bar to the petition

with respect to Maspeth Avenue employees, and the petition is dismissed with respect to that unit.